United Nations E/2004/85

Economic and Social Council

Distr.: General
6 July 2004

Original: English

Substantive session of 2004
New York, 28 June-23 July 2004
Agenda item 14 (h)
Social and human rights questions: Permanent Forum on Indigenous Issues

Information concerning indigenous issues requested by the Economic and Social Council

Report of the Secretary-General*

Summary

The present report is submitted in accordance with Economic and Social Council decision 2003/307, entitled "Review of indigenous issues within the United Nations system". The report contains a summary of replies received from Governments, non-governmental organizations and indigenous peoples' organizations as well as from the United Nations system. Analysis and observations are contained in chapters V and VI of the report.

* To allow time for consultation, the report has been submitted after the deadline established by the Documents Management Section.

04-40262 (E) 150704

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I. Introduction

1. The present report has been produced in accordance with decision 2003/307 adopted by the Economic and Social Council on 25 July 2003. The decision requested the Secretary-General to seek information related to the review from those Governments, non-governmental organizations, indigenous peoples' organizations and the relevant organs and bodies of the United Nations system, including the special mechanisms seized with indigenous issues, that have not yet submitted their views. The Council also requested the Secretary-General, on the basis of the information received, to provide additional substantive analysis addressing the elements contained in paragraph 8 of its resolution 2000/22 of 28 July 2000.

2. Pursuant to this request a note verbale was sent by the United Nations to the relevant Governments, organizations and bodies, as identified in the decision and mentioned above, to provide information they considered relevant for the review.

3. Replies were received from Finland, New Zealand and the United Kingdom of Great Britain and Northern Ireland. From the United Nations system, replies were received from the Department of Economic and Social Affairs of the Secretariat, the secretariat of the Framework Convention on Climate Change and the United Nations Human Settlements Programme (UN-Habitat). Information from indigenous peoples organizations was submitted in the form of a joint submission from the Grand Council of Crees (Eeyou Istchee), the Inuit Circumpolar Conference, the International Organization of Indigenous Resource Development, the Coordinadora de las Organizaciones Indígenas de la Cuenca Amazónica, the National Aboriginal and Torres Strait Islander Legal Services Secretariat, the Innu Council of Nitassinan, and the Foundation for Aboriginal and Islander Research Action. In addition to the indigenous peoples' organizations mentioned above, the joint submission was supported by several other indigenous and non-indigenous organizations.

4. Submissions, comments and information provided last year have already been collated and reported on in document E/2003/72. In the analytical part of this report, however, lessons are drawn from both sets of submissions.

5. Secondly, the decision requests the Secretary-General, on the basis of the information received, to review "all existing mechanisms, procedures and programmes within the United Nations concerning indigenous issues, including the Working Group on Indigenous Populations, with a view to rationalizing activities, avoiding duplication and overlap and promoting effectiveness".

II. Summary of comments by Governments

6. Finland stated that the Permanent Forum on Indigenous Issues has established itself as the leading actor in the field of indigenous issues and has provided indigenous peoples with an interactive discussion forum of a new type and with a wider mandate than what had previously existed. The Government of Finland highlighted the Permanent Forum as a focal point for indigenous issues within the United Nations system, but noted that an interactive dialogue between the Forum and other actors, especially the specialized agencies of the United Nations, needs to be developed and strengthened. Finland expressed its support for the wide mandate of the Permanent Forum and noted the contribution the special themes at each session made. The Government of Finland stated that sufficient financial support to

the Permanent Forum must be guaranteed in order to secure the Permanent Forum's independent status and role as a focal point for indigenous issues. Finland expressed its full commitment to working towards the adoption of the draft declaration on the rights of indigenous peoples and considers that the present draft is largely acceptable. Finland stated that it is of the utmost importance to continue the work in a spirit of compromise and show more political will in order to finalize the draft text and to submit it to the General Assembly, as a matter of priority, for consideration and final adoption. The Government of Finland welcomed the possibility of holding additionally meetings of the open-ended intersessional Working Group on the draft declaration on the rights of indigenous peoples, in 2004. Finland stated that the International Decade of the World's Indigenous People has served its purpose in drawing the world's attention to the issue of indigenous peoples and that there is no need to declare a second international decade on indigenous peoples for that purpose.

7. Finland expressed its desire that the current review be conducted with a view to rationalizing mechanisms and activities relating to indigenous issues. The Government of Finland expressed its wish to study and carefully consider the mandate and position of the Working Group on Indigenous Populations within the United Nations system, including the possibility of terminating its mandate in the longer run. In this respect, Finland noted that an overview by the Working Group on its future activities and scheduled contributions would also facilitate the process of review of indigenous issues within the United Nations. Finland expressed its full and continued support for the Special Rapporteur. Lastly, Finland noted the contribution made by United Nations treaty bodies. It noted that the concluding observations, concrete recommendations and views of the treaty bodies formed an important basis for the measures to be taken to realize the equality of the indigenous peoples in practice. The Government of Finland welcomed all efforts of the United Nations treaty bodies to raise greater awareness and to promote the full enjoyment of all human rights and fundamental freedoms by indigenous peoples and how in this respect the treaty bodies' thematic discussion days and general comments focused on indigenous issues served as useful tools.

8. In addition to reiterating comments submitted last year, New Zealand expressed the view that the Permanent Forum has become the world's pre-eminent indigenous meeting and provides a model for the confidence-building and consultation that should form the basis for the partnership between States and indigenous peoples. New Zealand noted that a rationalization of United Nations indigenous efforts, paying particular attention to streamlining and clear mandates, would pay dividends for indigenous peoples by helping ensure that objectives generated results. New Zealand expressed its awareness of the demands that multiple meetings and venues place on national, indigenous and non-governmental organization delegations as well as the United Nations system. In this regard, New Zealand noted that fewer meetings and a rationalization of agendas would help boost attendance and thus encourage wider representation and a greater exchange of views. New Zealand continued its support for the inclusion of indigenous issues in the work of the specialized agencies, including the World Health Organization (WHO), the International Labour Organization (ILO) and the World Bank. New Zealand welcomed the increasing cooperation between all component parts of the United Nations system in furthering indigenous issues and supported the continued strengthening of existing cooperation mechanisms and exchanges of information.

9. The United Kingdom identified the Permanent Forum as an excellent focal point within the United Nations and a means of bringing together experts, government representatives and indigenous organizations to raise awareness and formulate advice and recommendations for improving the position of indigenous people. The United Kingdom expressed concern over the duplication of work between the Working Group and the Permanent Forum. The United Kingdom noted that, unlike the Working Group, which is composed of expert members of the Subcommission, the Permanent Forum consists of both experts from Governments and indigenous organizations and that this inclusivity in the decision-making process has made the Permanent Forum a particularly representative and helpful body. The United Kingdom expressed its belief that the existing mechanisms for dealing with indigenous issues could be streamlined without any loss of impact and could make the United Nations more effective in dealing with indigenous issues by enabling more indigenous and non-governmental organization delegations to attend meetings, for example by reducing the number of meetings and concentrating the funds for attendance currently divided between the Permanent Forum and the Working Group.

III. Summary of comments by indigenous and non-governmental organizations

10. A joint submission entitled "Assessing the International Decade: urgent need to renew mandate and improve the United Nations standard-setting process on indigenous peoples' human rights" (hencefor h the Joint Submission) was submitted by the Grand Council of Crees (Eeyou Istchee), the Inuit Circumpolar Conference, the International Organization of Indigenous Resource Development, the Coordinadora de las Organizaciones Indígenas de la Cuenca Amazónica, the National Aboriginal and Torres Strait Islander Legal Services Secretariat, the Innu Council of Nitassinan, and the Foundation for Aboriginal and Islander Research Action. The joint submission was supported by several other indigenous and non-indigenous organizations. The submission is the same as the paper developed as input into the review of the International Decade of the World's Indigenous People, which is also being undertaken this year.

11. The joint submission highlighted both successes and shortcomings related to the United Nations draft declaration on the rights of indigenous peoples and stressed that it is urgent and critical for the General Assembly to adopt a formal instrument that elaborates human rights standards on the full range of basic issues concerning indigenous peoples. In this regard the Joint Submission strongly recommended that the mandate of the intersessional Working Group be renewed. They also made detailed recommendations concerning the working methods of the intersessional Working Group.

12. A suggestion was made in the joint submission that the Permanent Forum should play an effective role in advancing the goals of human-rights standard setting and that the following additional changes should be considered in regard to the overall United Nations human-rights standard-setting process concerning indigenous peoples:

(a) Increased attention and priority should be accorded by the General Assembly and the Commission on Human Rights to the adoption of a strong and uplifting United Nations Declaration on the Rights of Indigenous Peoples;

(b) At all stages of the standard-setting process, no declaration should be provisionally approved or adopted by the United Nations unless it has the strong support of indigenous representatives participating in such a process;

(c) New strategies should be developed to increase State commitment to the objectives of the human-rights standard-setting process relating to indigenous peoples;

(d) There should be greater coordination between such standard-setting processes at the United Nations and those at a regional level; and

(e) Public education and awareness of the importance of developing international human-rights standards relating to indigenous peoples should be increased.

13. The joint submission stated that it was timely and pressing for the United Nations to examine the question of the status and role of indigenous peoples within the United Nations. In this regard, it was maintained that it was essential to ensure democratic and effective involvement by indigenous representatives at all levels of the United Nations consistent with the unique legal status and rights of indigenous peoples. It was added that such an examination should be carried out with the full and effective participation of indigenous peoples' representatives on an equitable global basis.

IV. Information received from departments, programmes, organizations and agencies of the United Nations system and other intergovernmental organizations

14. The Department of Economic and Social Affairs advised that the secretariat for the Permanent Forum was established on 27 February 2003 at the Department within the Division of Social Policy and Development and was provided with interim staff.

15. Since its launch, the secretariat has undertaken a variety of activities including the formal establishment of the office that is responsible for liaison with the Chairperson and members of the Permanent Forum on various substantive issues throughout the year, as well as preparations and logistics for the annual sessions of the Forum. The secretariat has also cooperated with the Department of Public Information to initiate press releases and develop a media strategy to publicize the work of the Permanent Forum. The secretariat has also established the Trust Fund for the Permanent Forum.

16. The secretariat has cooperated with various parts of the United Nations system, as well as non-governmental and indigenous peoples' organizations, to encourage and support broad representation at the annual sessions of the Permanent Forum. Furthermore, the secretariat has worked closely with the Inter-Agency Support Group to promote a coordinated substantive response to the recommendations of the Permanent Forum.

17. The secretariat also participated at the Expert Seminar on Indigenous Children organized by the Innocenti Research Centre of the United Nations Children's Fund (UNICEF) in March 2003 to further the agenda of the second session of the Permanent Forum, whose theme was "indigenous children and youth". The secretariat has also established an intra-departmental task force within the Department of Economic and Social Affairs to help make available to the Permanent Forum the relevant and broad expertise of the Department.

18. The secretariat facilitated an international workshop on data-collection and the disaggregation of data and also organized and facilitated the Global Forum on Indigenous Peoples and the Information Society, within the context of the World Summit on the Information Society. The secretariat has also organized various promotional events and panels at United Nations Headquarters and is promoting the integration of indigenous issues within the United Nations Development Group, which included indigenous issues as one of its 2004 priorities.

19. Regarding the area of sustainable development, the Department of Economic and Social Affairs stated that, from its inception, the work of the Commission on Sustainable Development has been relevant to indigenous people. It noted that chapter 26 of Agenda 21 provided the programmatic basis for making indigenous issues relevant to the work of the Commission by recognizing indigenous people as one of the nine major groups of civil society to be included in the major groups programme. It stated that national and international efforts to implement environmentally sound and sustainable development should recognize, accommodate, promote and strengthen the role of indigenous people and their communities. It also outlined objectives, activities and means of implementation that Governments and others should aim to fulfil in partnership with indigenous people and their communities. The Johannesburg Declaration reaffirmed "the vital role of the indigenous peoples in sustainable development" and this is reflected in the Johannesburg Plan of Implementation, which contains numerous references to indigenous issues.

20. The Department noted that in the current two-year action-oriented cycles of the review of the twelfth session of the Commission on Sustainable Development and preparation for the thirteenth session of the Commission an official indigenous peoples' discussion paper was submitted to the twelfth session of the Commission, which was prepared by the Tebtebba Foundation and the Indigenous Environmental Network in consultation with indigenous peoples' organizations.

21. The secretariat of the Framework Convention on Climate Change noted that since 1999 indigenous peoples' organizations have participated in the Convention process as observers and since 2000 the indigenous peoples' organizations have been considered as one of the five non-governmental constituencies in that process. In regards to the Convention process the indigenous peoples' organizations provide representatives who speak at sessions, attend workshops, etc. In response to a request by the Permanent Forum, the Convention secretariat has prepared a document entitled "Effective participation in the Convention process", which includes a section on the participation of indigenous peoples in the Convention process. This document will be considered by the parties at the twentieth session of the Subsidiary Body for Implementation to be held from 16 to 25 June 2004 in Bonn, Germany.

22. UN-Habitat noted that its activities, guided by the Habitat Agenda and the Millennium Declaration as well as by human rights instruments, treaties and their monitoring bodies, have a particular focus on protecting vulnerable and disadvantaged groups, including the urban poor and indigenous peoples, particularly through measures that aim to promote, protect and fulfil human rights. The Habitat Agenda addresses indigenous peoples in 14 out of its 241 paragraphs, with paragraph 122 in particular providing extensive guidance to Governments and leaders of indigenous communities. The Programme explained that its work on security of tenure provides scope for the strategic partnership with indigenous people in addressing the complex nature of land issues.

23. The Programme highlighted that the Habitat Agenda emphasizes the need to work in partnership with youth, including indigenous youth, in employment programmes and vocational skills development that enhance their capacity to participate fully in urban poverty reduction. Although it has no specific projects or programmes on indigenous children and youth, UN-Habitat does have the operational and normative experience of dealing with local authorities through its various programme activities. Furthermore, the Programme expressed its intention to collaborate with other agencies in addressing the issues of youth, including indigenous youth, through the proposed Global Partnership Initiative for Youth in Africa. UN-Habitat identified its Gender Policy Unit and the objectives of that unit. While working towards these objectives, UN-Habitat focuses particularly on the needs of the most vulnerable and disadvantaged women groups, including indigenous women. The Programme also noted that the World Urban Forum provides avenues for the involvement of indigenous women, and opportunities for them to raise their concerns. The Programme identified the research initiative on "Indigenous peoples and the right to housing: a global overview" undertaken within the United Nations Housing Rights Programme and implemented jointly with the Office of the United Nations High Commissioner for Human Rights, as the most significant activity of UN-Habitat focusing specifically on indigenous peoples and indigenous issues.

V. Analysis and review

24. At its 49th plenary meeting on 25 July 2003, the Economic and Social Council decided to postpone consideration of the review of the mechanisms, procedures and programmes within the United Nations concerning indigenous issues to its substantive session in 2004. The Council requested the Secretary-General to seek additional information from those who had not yet submitted their views. The Council also requested the Secretary-General, on the basis of information received, to provide additional substantive analysis addressing the elements contained in paragraph 8 of its resolution 2000/22 of 28 July 2000. In addition to the eight Member States that submitted views in 2003, only three additional Member States responded to the request made by the United Nations in 2004. A joint submission was made in 2004 by several indigenous organizations that focused mainly on an assessment of the International Decade. In addition, three United Nations entities submitted information on programmes that support indigenous peoples.

25. In order to assist in the review to be undertaken by the Council with a view to rationalizing activities, avoiding duplication and overlap and promoting effectiveness, the mandates of the various United Nations mechanisms concerning

indigenous issues, as well as the voluntary funding arrangements are summarized below.

Mandates of the United Nations indigenous-related mechanisms

26. The Working Group on Indigenous Populations is a subsidiary organ of the Subcommission on the Promotion and Protection of Human Rights. It is composed of five independent human rights experts, with States, United Nations bodies and non-governmental organizations with consultative status as observers. The Working Group makes recommendations to the Subcommission. The Working Group is also open to representatives of indigenous peoples and their communities and organizations that do not have consultative status. The Working Group is mandated to:

(a) "Review developments pertaining to the promotion and protection of the human rights and fundamental freedoms of indigenous populations ...";

(b) "Give special attention to the evolution of standards concerning the rights of indigenous populations ...".

27. The Working Group on the draft declaration on the rights of indigenous peoples consists of representatives of Member States. Non-governmental and indigenous organizations with consultative status with the Economic and Social Council may take part in the proceedings. Indigenous organizations without consultative status may act as observers if they have been approved in accordance with the Commission on Human Rights resolution 1995/32 procedure. The intersessional Working Group was created for the sole purpose of elaborating a draft United Nations declaration on the rights of indigenous peoples for consideration and adoption by the General Assembly within the International Decade of the World's Indigenous People. The Working Group has met for 10 days each year and produced annual progress reports.

28. The Special Rapporteur of the Commission on Human Rights on the situation of the human rights and fundamental freedoms of indigenous people is an independent expert appointed by the Commission. The Special Rapporteur is mandated to:

"(a) To gather, request, receive and exchange information and communications from all relevant sources, including Governments, indigenous people themselves and their communities and organizations, on violations of their human rights and fundamental freedoms;

"(b) To formulate recommendations and proposals on appropriate measures and activities to prevent and remedy violations of the human rights and fundamental freedoms of indigenous people;

"(c) To work in close relation with other special rapporteurs, special representatives, working groups and independent experts of the Commission on Human Rights and of the Subcommission on the Promotion and Protection of Human Rights, taking into account the request of the Commission contained in resolution 1993/30".

29. The United Nations Permanent Forum on Indigenous Issues is a subsidiary organ of the Economic and Social Council, consisting of 16 members. Eight

members are nominated by Governments and elected by the Council, while the other eight members are appointed by the President of the Council following formal consultation with the Bureau and the regional groups through their coordinators, on the basis of broad consultations with indigenous organizations. States, United Nations bodies and organs, intergovernmental organizations and non-governmental organizations in consultative status with the Council may participate in the work of the Permanent Forum as observers. Organizations of indigenous people may also participate as observers in accordance with the procedures that have been applied in the Working Group on Indigenous Populations. The purpose of the Permanent Forum is to serve as an advisory body to the Council with a mandate to discuss indigenous issues within the mandate of the Council relating to economic and social development, culture, the environment, education, health and human rights. In so doing, the Permanent Forum shall:

> "(a) Provide expert advice and recommendations on indigenous issues to the Council, as well as to programmes, funds and agencies of the United Nations, through the Council;
>
> "(b) Raise awareness and promote the integration and coordination of activities relating to indigenous issues within the United Nations system;
>
> "(c) Prepare and disseminate information on indigenous issues ...".

30. The Permanent Forum meets once a year for 10 working days and submits an annual report to the Economic and Social Council on its activities, including any draft decisions for approval by the Council.

Voluntary funding arrangements in support of activities concerning indigenous issues

31. At present, there are four voluntary funds established within the United Nations system to facilitate various indigenous activities and two further voluntary funds are proposed.

United Nations Voluntary Fund for Indigenous Populations

32. The United Nations Voluntary Fund for Indigenous Populations was established pursuant to General Assembly resolution 40/131 with the purpose of assisting representatives of indigenous communities and organizations to participate in the deliberations of the Working Group on Indigenous Populations. The General Assembly, in its resolution 50/156, decided that the Fund should also be used to assist representatives of indigenous communities and organizations authorized to participate in the deliberations of the Working Group on the draft declaration on the rights of indigenous peoples. The General Assembly further expanded the mandate of the Fund in its resolution 56/140 by deciding that the Fund should also be used to assist representatives of indigenous communities and organizations in attending, as observers, sessions of the Permanent Forum on Indigenous Issues. The Fund is administered by a Board of Trustees composed of five persons with relevant experience on indigenous issues, who serve in their personal capacity. The members of the Board are appointed by the Secretary-General, in consultation with the Chairperson of the Subcommission on the Promotion and Protection of Human Rights, for a three-year renewable term. At least one member of the Board shall be a representative of a widely recognized organization of indigenous people.

Voluntary Fund for the International Decade of the World's Indigenous People

33. The Voluntary Fund for the International Decade of the World's Indigenous People was established pursuant to General Assembly resolutions 48/163, 49/214 and 50/157 relating to the International Decade of the World's Indigenous People. In accordance with resolution 48/163, the Secretary-General was requested to establish a voluntary fund for the Decade and was authorized "to accept and administer voluntary contributions ... for the purpose of funding projects and programmes during the Decade". In accordance with paragraph 24 of the annex to General Assembly resolution 50/157, the Coordinator of the Decade, the United Nations High Commissioner for Human Rights, should "encourage the development of projects and programmes, in collaboration with Governments and taking into account the views of indigenous people and the appropriate United Nations agencies, for support by the Voluntary Fund for the Decade". The Fund has been used to fund project proposals from indigenous organizations and from the indigenous unit of the Office of the High Commissioner for Human Rights.

34. The Fund is administered by the Secretary-General and the Coordinator of the International Decade, who is the High Commissioner for Human Rights, in accordance with the Financial Regulations and the Rules of the United Nations. In accordance with paragraph 23 of the annex to resolution 50/157 on the programme of activities for the International Decade, an advisory group was created in April 1996 to assist the Coordinator of the Voluntary Fund. The present advisory group is composed of the members of the Board of Trustees of the Voluntary Fund for Indigenous Populations, as well as the Chairperson of the Working Group on Indigenous Populations. A review of the Decade has recently been completed and includes information on the expenditures and outcomes of the Voluntary Fund for the Decade as contained in document E/2004/82.

Trust Fund in support of the United Nations Permanent Forum on Indigenous Issues

35. In General Assembly resolution 57/191 on the Permanent Forum on Indigenous Issues, the General Assembly, inter alia, requested the Secretary-General to establish a voluntary fund for the Permanent Forum on Indigenous Issues for the purpose of funding the implementation of recommendations made by the Forum. In response to that request, the Secretary-General established the Trust Fund in support of the United Nations Permanent Forum on Indigenous Issues in July 2003. The voluntary contributions are to be used for funding the implementation of recommendations made by the Forum through the Economic and Social Council, in line with paragraph 2(a) of Economic and Social Council resolution 2000/22, as well as for funding activities under its mandate, as defined in paragraphs 2(b) and (c) of the same resolution.

World Bank Global Fund for Indigenous Peoples

36. The Global Fund for Indigenous Peoples was established by the World Bank in 2003 and provides support for strengthening the United Nations Permanent Forum on Indigenous Issues, and for a targeted pilot programme of capacity-building for indigenous leaders in the Andean region of South America. It also includes a grants facility that provides grants to indigenous organizations worldwide for a range of development-related activities. The World Bank plans to mobilize internal resources

and seek external resources to support grant-making for the second and third years of the grants facility. The Bank intends to transfer the grants facility to an appropriate organization after the third year. It should be noted that administrative difficulties have caused the promise of financial support for the Permanent Forum to be withdrawn.

Proposed voluntary funds

37. As the United Nations system continues to open up to indigenous peoples' organizations and representatives, there is a growing need on the part of the various components of the system to find support for the participation of indigenous peoples in meetings and events relevant to them. The secretariat of the Convention on Biological Diversity and the World Intellectual Property Organization (WIPO) have both proposed, among other strategies, the possible establishment of voluntary funds for such a purpose and these proposals are currently under discussion.

Inter-Agency Support Group

38. In addition to the various mechanisms and voluntary funding mechanisms mentioned above, organizations of the United Nations system have taken steps to increase their activities in support of indigenous peoples. The measures taken by the United Nations system were outlined in the report submitted to the Economic and Social Council in 2003, and supplemented with the additional information included in this report. The United Nations system has also taken steps to improve the coordination of its activities for the benefit of indigenous peoples. It will be recalled that an Inter-Agency Support Group was originally established by the Office of the United Nations High Commissioner for Human Rights in 2001, with the purpose of bringing the efforts of the United Nations system together so as to facilitate the first session of the Permanent Forum.

39. The Support Group is a useful mechanism for inter-agency cooperation on indigenous issues in relation to the Permanent Forum and for mainstreaming of indigenous issues throughout the United Nations system. It has a rotating chairperson and has been successively hosted by the World Bank, WIPO, and the United Nations Development Programme. Its membership has been growing and it is now composed of 18 United Nations system entities. The Support Group is composed of focal points/units or representatives identified by heads of the departments or organizations of the United Nations system whose work is relevant to indigenous issues. It meets at least once a year for a substantive meeting, with follow-up meetings as necessary.

Rationalizing activities, avoiding duplication and overlap and promoting effectiveness

40. Currently there are four mechanisms within the United Nations system that deal specifically with indigenous issues. They include the Working Group on Indigenous Populations, a Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people, the Working Group on the draft declaration on the rights of indigenous peoples, and the United Nations Permanent Forum on Indigenous Issues.

41. The two Working Groups, the Special Rapporteur and the Permanent Forum each has a unique and specific mandate within the United Nations system. However,

it is also evident that in accomplishing its mandate one mechanism could touch upon subject matters that might be the primary concern of another mechanism. This in itself should not be characterized as an overlap of mandates, but rather as an acknowledgement and reinforcement of the interrelated nature of the many issues facing indigenous peoples. Should any rationalization or streamlining of indigenous mechanisms take place, the unique and specific activities undertaken by each mechanism should be taken into account.

42. The views on the various mechanisms submitted in response to the request by the United Nations in 2003 and 2004 indicated a diversity of positions. There was strong support for the continuation of the Working Group on Indigenous Populations from most indigenous organizations and some Member States. Many Member States advocated greater rationalization and coordination of all indigenous mechanisms to facilitate efficiency and reduce duplication. A few Member States suggested that the Working Group had provided a valuable service in the past but that it should now be brought to an end.

43. The role of the Special Rapporteur received strong support. Many Governments and indigenous peoples organizations expressed their hope that the Special Rapporteur would work more closely with the Permanent Forum, and several replies identified the need for increased coordination and cooperation between existing indigenous mechanisms and various other component parts of the United Nations system. Such coordination and cooperation would be in accordance with and would facilitate the Special Rapporteur's mandate.

44. Some replies from both Member States and indigenous organizations identified the Permanent Forum as the focal point for indigenous issues within the United Nations system and considered that recognition of that status would facilitate the Forum's mandate to promote coordination relating to indigenous issues within the United Nations system. The mainstreaming of indigenous issues and coordination and cooperation in this area lies at the heart of the Permanent Forum's mandate.

45. Although examined under a different mandate, similar themes are being considered by both the Working Group and the Permanent Forum. The themes of Working Group meetings of the last four years have been reflected in substance in the reports and recommendations emerging for the Forum during its first three sessions. As human rights is one of the mandated areas of the Permanent Forum, it has become the practice of indigenous delegates attending the Permanent Forum since the first session to set their suggested recommendations in context by providing a review of developments from the various indigenous regions and their homelands. Coordination of the themes of the Working Group, the Special Rapporteur and the Permanent Forum would seem desirable, in order to avoid duplication and to promote effectiveness.

46. An analysis of the recent attendance and participation records of both the Working Group and the Permanent Forum indicate that many of the more than 1,000 indigenous representatives attend both annual meetings. These meetings are held in different locations and at different times of the year. As the United Nations system increases the programmes and activities focused on indigenous peoples, the representatives of indigenous peoples and organizations have an understandable and justified desire to participate in the relevant forums. This increasing engagement of indigenous peoples across the United Nations system, which currently peaks at the meetings of the Working Group and the Permanent Forum, may suggest a need,

particularly on the part of the representatives of the indigenous peoples, to plan their coverage of the different meetings and events, balancing effective coverage with the need to maximize the efficient use of scarce resources.

47. While the various indigenous mechanisms have their specific mandates and roles to play, it was suggested by some Member States that the demands of multiple meetings and venues on national indigenous and non-governmental organization delegations, as well as the United Nations system and Member States, should be examined. However, the ability to better coordinate these meetings may be hampered by broader arrangements. The Working Group has to report to the Subcommission on the Promotion and Protection of Human Rights in Geneva in August of each year, while the Permanent Forum meets in time to submit its report to the Economic and Social Council at its annual session in July.

48. Member States have noted that resources for indigenous issues were both scarce and thinly spread. They recommended that the available resources should be utilized with better coordination and should be streamlined to improve their effectiveness. A major reason for the proliferation of voluntary funds is the increasing participation of indigenous representatives in relevant and expanding United Nations system forums and the inability of the mandates of existing funds to adequately meet this growing need of indigenous peoples. Some Member States have emphasized that, in line with the United Nations reform agenda, existing voluntary funds should be rationalized to ensure that they adequately meet the evolving needs of indigenous peoples. The creation of a simpler arrangement would also reduce administrative time and costs and save both human and financial resources.

49. The Voluntary Fund on Indigenous Populations currently provides funds for limited indigenous participation in the Working Group on Indigenous Populations, the Working Group on the draft declaration and the Permanent Forum. This year the Voluntary Fund received 546 admissible applications to participate in these three meetings and some 106 indigenous representatives were funded to attend the Working Group on Indigenous Populations (47), the Working Group on the draft declaration (13) and the Permanent Forum (46). However, more than 10 United Nations agencies have indicated the crucial need for indigenous representation and participation at their various meetings. Some agencies, such as the Convention on Biological Diversity and the World Intellectual Property Organization, are currently considering the creation of their own new voluntary funds to support the participation of indigenous representatives. As the Voluntary Fund on Indigenous Populations now also assists the participation of indigenous representatives attending the Permanent Forum, it may be appropriate that the Chairperson of the Forum be part of the consultative mechanism for the appointment of the Board of Trustees.

VI. Conclusions

50. **While there may be differing views on the various mechanisms, it is clear that every effort must be made to ensure coordination among them, while recognizing the specific tasks that each is mandated to perform. It is also crucial that the scarce resources of indigenous peoples and their organizations, as well as voluntary contributions made by Member States, are utilized with**

the maximum level of efficiency and effectiveness. The increased attention being given to indigenous issues within organizations of the United Nations system is a welcome development. The United Nations should continue to mainstream indigenous issues and to expand its programmes and activities for the benefit of indigenous peoples in a coordinated manner.

51. The Economic and Social Council, which decided to postpone the consideration of the review mandated by its decision 2002/286 to its substantive session in 2004, should play a lead role in ensuring greater coherence and improved coordination and effectiveness in the various mechanisms concerning indigenous issues. The United Nations efforts in this area should be in line with the broader reform objectives endorsed by the General Assembly in its resolution 57/300.

52. The Working Group on the draft declaration will meet twice this year to work on the text of the draft declaration on the rights of indigenous peoples: to date, only two of the 45 articles have been adopted. Indigenous peoples remain hopeful that consensus will be reached in this the final year of the Decade. There is also currently before the Council a draft decision of the Permanent Forum requesting consideration of a second decade. Hence, a number of factors have combined to underline the importance of this particular time in history for the world's indigenous peoples.

53. Indigenous peoples are often among the most disadvantaged of peoples in the world, and this is a pivotal year in their struggle to end marginalization. They have set their hopes on the full support of the United Nations in efforts for the betterment of their lives and in having their legitimate rights and aspirations respected and protected. We should all do our utmost to respond to their expectations.

United Nations E/2004/86

Economic and Social Council

Distr.: General
25 June 2004

Original: English

Substantive session of 2004
New York, 28 June-23 July 2004
Item 7 (f) of the provisional agenda*
Coordination, programme and other questions: Ad hoc advisory groups on African countries emerging from conflict

Assessment of the ad hoc advisory groups of the Economic and Social Council on African countries emerging from conflict

Report of the Secretary-General**

Summary

In its resolution 2002/1 of 15 July 2002, the Economic and Social Council created a framework for advisory group(s) on African countries emerging from conflict. Thus far, the Council has set up two ad hoc advisory groups, on Guinea-Bissau and on Burundi. The present report is submitted pursuant to Economic and Social Council resolution 2003/50 of 24 July 2003, in which the Council decided to undertake an assessment of lessons learned from these groups and requested the Secretary-General to provide a report on this matter.

The report highlights the positive role played by the groups in the post conflict reconstruction efforts of the countries concerned, by mobilizing donor support while encouraging the national authorities to establish a conducive environment for increased assistance. To these ends, a partnership approach between the national authorities and international stakeholders was fostered. The report also stresses the enhanced coordination that the groups have promoted, in particular between the United Nations and the Bretton Woods institutions and, at the intergovernmental level, between the Security Council and the Economic and Social Council, which has

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* E/2004/100 and Corr.2.

** The report is submitted late in order to reflect the deliberations of the Council's meeting on the assessment of the ad hoc advisory groups, held in May 2004.

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served to advance a holistic approach that addresses both security and economic issues in the transition and recovery phase. Areas for improvement in the work of the groups are also identified throughout the document.

In its concluding section, the report includes recommendations for the future consideration by the Council of the situation in African post-conflict countries.

I. Introduction

1. The General Assembly, in its resolution 55/217 on causes of conflict and the promotion of durable peace and sustainable development in Africa, requested the Economic and Social Council to consider creating an ad hoc advisory group on African countries emerging from conflict with a view to assessing their needs and elaborating a long-term programme of support that begins with the integration of relief into development. The Security Council, in the presidential statement of 24 September 1998 (S/PRST/1998/29) issued at the end of a ministerial meeting on the situation in Africa, and in its resolution 1170 (1998), also called on the Economic and Social Council to consider the issue. It reaffirmed the importance of interaction with the Economic and Social Council in this regard in a presidential statement of 31 January 2002 (S/PRST/2002/2).

2. In its Ministerial Declaration, adopted in July 2001, on the role of the United Nations in support of the efforts of African countries to achieve sustainable development, the Economic and Social Council emphasized the importance of efforts for integrating peace and development. In response to a request by the Council, the Secretary-General submitted a report on the establishment of an ad hoc advisory group on African countries emerging from conflict (E/2002/12), with proposals on its mandate and modalities of work.

3. In its resolution 2002/1 of 15 July 2002, the Economic and Social Council created a framework for advisory group(s) on African countries emerging from conflict. The mandate of the group(s) is to examine the humanitarian and economic needs of the country in question, review relevant assistance programmes, prepare recommendations for a long-term programme of support based on development priorities, through the integration of relief, rehabilitation, reconstruction and development into a comprehensive approach to peace and stability, and provide advice on how to ensure that the assistance of the international community to the country in question is adequate, coherent, well coordinated and effective and promotes synergy.

4. Thus far, the Economic and Social Council has created two ad hoc advisory groups, at the request of the countries' authorities. In its decision 2002/304 of 25 October 2002, the Council established the Ad Hoc Advisory Group on Guinea-Bissau, while the Ad Hoc Advisory Group on Burundi was created pursuant to its resolution 2003/16 of 21 July 2003. The annex to the present report provides information on the composition of the groups and an overview of their activities.

5. The present report is submitted pursuant to Economic and Social Council resolution 2003/50 of 24 July 2003, in which the Council reiterated the need to undertake an assessment of lessons learned based on the initial experience of such ad hoc advisory groups, no later than at its substantive session of 2004, stressed the need to assess also progress made in the implementation of recommendations made by the Ad Hoc Advisory Groups and requested the Secretary-General to provide a report on that subject to its substantive session in 2004.

6. On 3 May 2004, the Council held an informal meeting to assess the work of the Ad Hoc Groups and to start preparing for the substantive session of the Council. The event, which was attended by the Minister of Planning of Burundi, the Chairman of and members of the two Ad Hoc Advisory Groups, ambassadors, the Deputy Special Representative of the Secretary-General for Burundi, the United

Nations Resident Coordinator in Guinea-Bissau, the Special Adviser on Africa, senior officials of the United Nations Development Programme (UNDP) and of the Departments of Economic and Social Affairs and of Political Affairs of the United Nations Secretariat, and field representatives of the World Bank and the International Monetary Fund (IMF), generated a lively and open discussion on all aspects of the work of the advisory groups. The exchange of views among all the participants revealed a broad agreement that the overall experience had been positive. The discussions also helped identify lessons learned and a number of suggestions and ideas were put forward for future action in this field. The discussions held at that meeting have been taken into account in the preparation of the present report.

7. The report is structured around the mandate of the Groups so as to focus the assessment on their performance in relation to the functions entrusted to them by the Council.

II. The composition of the Groups

8. The two Ad Hoc Advisory Groups have been recognized as an innovative mechanism in many respects, including their composition. Both Groups were created at the request of the authorities of the countries in question, who demonstrated strong willingness to re-engage the international community in support of their reconstruction efforts. The Permanent Representatives of Guinea-Bissau and Burundi have been members of the respective Group, which has ensured a high level of ownership of the process by the countries themselves.

9. Both Groups have been led by an official from an African country (the Permanent Representative of South Africa) and included both Africans and major donors as members, a combination that enables cross-fertilization of knowledge on donor practices and regional issues. In both cases, interlocutors of the Groups could see that they included major key political players for Guinea-Bissau and Burundi. The participation of the President of the Economic and Social Council and of the Chairman of the Ad Hoc Working Group of the Security Council on Conflict Prevention and Resolution in Africa added to the high political profile of the Groups. In the case of Guinea-Bissau, the Chairman of the Group of Friends also took part in the work of the Group.

10. The framework for the composition of the Groups, as decided by the Economic and Social Council in its resolution 2002/12, which provided for the Groups to be small but balanced and representative, has proved successful and has worked well in practice. Members of the groups have all taken part in this work in an outstanding, dedicated manner, devoting a great deal of time and energy to achieve constructive outcomes. The leadership role played by Ambassador Dumisani Kumalo, the Chairman of both Groups, has, in particular, greatly contributed to the thoroughness, balance and effectiveness of the exercises and to their coherence with major regional efforts such as the strengthening of the African Union and the New Partnership for Africa's Development (NEPAD).

III. The review processes carried out by the groups

11. The two Ad Hoc Advisory Groups were mandated inter alia to assess the economic and humanitarian needs of the countries concerned and to review relevant programmes of support. To achieve these goals, the Groups visited the countries and undertook broad consultations with the national authorities and their development partners. In both cases, the first phase of consultations was held in New York with representatives of the United Nations Secretariat, UNDP and other funds and programmes, and concerned agencies, in particular with the Bretton Woods institutions with which the Guinea-Bissau Group also met in Washington. The second phase of consultations was held at the country level and included national authorities, political parties, civil society organizations, the media, United Nations agencies and other organizations active on the ground, as well as the donor community. This two-tier process has made possible a coherent and methodical approach to assessing the situations under consideration, with a broad "learning" process followed by a practical exposure to the realities on the ground.

12. The time frame for the Groups to provide their recommendations to the Economic and Social Council was relatively short, namely three to four months. In view of the multitude of actors that the groups had to meet and the time required to undertake field missions and formulate a report to the Council, time was not sufficient to carry out in-depth and detailed reviews of the needs of the countries and of the assistance they receive. As a result, the reports submitted to the Council include an overview of the situation as observed and analysed by the Groups, followed by policy recommendations with varying degrees of specificity. The reports are comprehensive in terms of the range of issues covered, but are succinct and are not meant to be an exhaustive and in-depth review of the situation in the respective countries.

13. One of the most innovative and significant features of these review processes was that the Groups have sought to look in a holistic way at both political factors and socio-economic ones. By focusing on the interrelationships between them and soliciting the views thereon of a wide range of development actors, the Groups were able to foster a comprehensive and integrated approach to peace, stability, recovery and long-term development. For all these reasons, the process has been perceived by the countries concerned and their development partners as open, transparent and participatory, leading to balanced and meaningful results.

IV. The ad hoc advisory groups as advocates for long-term international support to Guinea-Bissau and Burundi

14. The Groups were mandated to prepare recommendations for a long-term programme of support, based on development priorities, through the integration of relief, rehabilitation, reconstruction and development into a comprehensive approach to peace and stability. The recommendations made by the Ad Hoc Advisory Groups to the Council in their reports (E/2003/8 and E/2004/11) are specific to the problems and challenges facing the countries in question, and avoid reproducing identical or standard analysis.

15. The Ad Hoc Advisory Group on Guinea-Bissau made short- and long-term recommendations. Under the short-term ones, it recommended a partnership

approach between the authorities of Guinea-Bissau and the international community whereby the authorities would work on the promotion of the rule of law and political stability, while international development partners would provide emergency financial support and technical assistance in various fields. Under the long-term recommendations, it identified measures to be taken by the authorities and development partners to engage the country in economic growth and sustainable development. The Ad Hoc Advisory Group on Burundi, for its part, made recommendations for consideration by the Council on (i) maintaining the momentum and consolidating the peace process, (ii) promoting stability, (iii) engaging in poverty alleviation and sustainable development and (iv) reinforcing international partnership.

16. These recommendations were welcomed by the Council (see resolutions 2003/1 and 2004/1). The Council specifically endorsed the partnership approach set out for Guinea-Bissau. There was, however, no in-depth discussion of the report of the Ad Hoc Advisory Group on Burundi by the Council earlier this year, a gap that could be compensated for by a future debate within the Council on international support to Burundi, for example after general elections are held in the country later this year.

Fostering international partnerships

17. The groups have advocated enhanced relationships between the countries concerned and the international community through a partnership approach, aimed firstly at establishing a clear and mutually agreed understanding of the problem and secondly at setting out concrete steps towards a solution. This approach led to specific recommendations being addressed to both national authorities and international partners, specifying in an objective manner their respective responsibilities.

18. In the case of Guinea-Bissau, the partnership approach materialized with the creation of the Economic Emergency Management Fund, pursuant to a recommendation of the Group in its initial report to the Council. The Fund, which is managed by UNDP, received financial contributions from some donors in early 2004 and is being used to enable the Government to resume the provision of social services and key public administration activities. The Fund is not geared to addressing the long-term development priorities, but is designed to provide relief of a transitional nature, thus enabling the country to contain potentially volatile social tensions during the transition process.

19. It is widely recognized that the Group has been instrumental in assembling a coalition of partners in support of Guinea-Bissau and in keeping it mobilized, a value added for other international mechanisms. The group issued two statements at key moments of the political life of the country, calling on donors to extend emergency assistance.

20. The Burundi Group has emphasized the many interlinked challenges that the country needs to confront, including consolidating the peace process, in order to improve its socio-economic situation. The Group's recommendations in the four areas outlined in paragraph 15 above do not make a strict distinction between the short, medium and long term. As State institutions have continued to function adequately, in spite of 10 years of war, the Group's advocacy of support to the country, including direct budgetary support, did not include the establishment of a

specific mechanism to channel international assistance. The participation of several of the Group's members in the Forum of Development Partners for Burundi, held in Brussels in January 2004, testifies to the Group's value as an interlocutor and an advocate vis-à-vis the donor community, a role that was especially praised by the Minister of Planning, Reconstruction and Development of Burundi, who attended recent meetings of the Economic and Social Council.

21. One of the lessons learned from this process is the importance of the earliest possible consultation with donors, in advance of donor meetings, in order to maximize impact on the commitments made.

The integration of relief, rehabilitation, reconstruction and development, through a comprehensive approach to peace and stability

22. This issue was an integral part of the mandate of the Groups and was carefully pursued in both cases. The Guinea-Bissau Group stated in its initial report that "it was important to think outside the framework of classic models and solutions, bearing in mind that short-term support can be used to leverage longer-term change". Through, among other things, its advocacy role for the establishment of the Emergency Economic Management Fund, the Group focused on short- and medium-term assistance while linking it to long-term objectives, within the framework of the normalization of the country's political situation and, concomitantly, of its relations with partners.

23. The Burundi Group has called for greater support for the work of the humanitarian community, including through financial contributions to the United Nations Consolidated Appeals Process, and has recognized the need to build, through humanitarian assistance, the basis for long-term sustainable development. It also pointed to the gap between relief and development it observed in the country, as in other post-conflict situations, and encouraged United Nations organizations to act to address it and to engage in longer-term rehabilitation of communities. Beyond these appeals, the report of the Group does not provide operational recommendations or strategic advice on how to make the transition from one phase to the other. Although the Groups' value added resides principally in their advocacy role, their relevance would have been further enhanced by more detailed consideration of practical transition issues.

24. Transition from humanitarian assistance to development support, which was addressed by the Council in its agreed conclusions 1998/1, continues to be an important and topical issue. The work of these Ad Hoc Advisory Groups should be viewed as an integral part of the follow-up to those agreed conclusions. Other relevant initiatives are under way. The Council, at its substantive session of 2004, will hold an informal meeting on the margins of the operational activities and humanitarian segments to bring together stakeholders from the humanitarian and development spheres to discuss transition issues. The United Nations Development Group and the Executive Committee on Humanitarian Affairs have created a joint working group on transition issues which recently issued a report. It would be useful to link these initiatives and build upon them. The Council and its Ad Hoc Advisory Groups might wish to pursue this matter.

25. Beyond transition issues, the Groups, in accordance with their mandate, have served to advance a comprehensive approach to peace and development by making it clear that the traditional division between "security" or "political" issues on the one hand and "economic" and "development" issues on the other is both intellectually and empirically unsustainable. Considering the magnitude and depth of the problems in countries emerging from conflict, there is a need for a political framework under which development partners can plan their long-term involvement. Many partners of Guinea-Bissau and Burundi have praised the Groups for providing such a political framework. At the same time, the Groups have highlighted that there is more to post-conflict peace-building than holding elections and promoting political reconciliation, and have called for concrete development assistance to sustain peace in these countries.

26. Demobilization, disarmament, reinstallation and reinsertion programmes are at the crossroads of the search for peace and the need to give development opportunities to people. Although the matter was considered by the Groups and discussed with many actors involved in the field, more specific recommendations on the handling of these processes and the support they require would have further strengthened the Groups' contribution.

27. The advocacy role successfully played by the Groups for a comprehensive approach to peace and development for Guinea-Bissau and Burundi put some light on the work of international organizations in these two countries and increased the visibility of their efforts. This has been made possible by the Groups' determination to engage in an open dialogue with a wide range of the countries' partners and to contribute to a coherent approach to these post-conflict situations.

V. The role of the Ad Hoc Advisory Groups in bringing coherence and coordination to international support to Guinea-Bissau and Burundi

28. The Ad Hoc Advisory Groups are mandated to provide advice on how to ensure that the assistance of the international community in supporting the countries in question is adequate, coherent, well coordinated and effective and promotes synergy. In a relatively short period, the Groups succeeded in making a distinct contribution to promoting effective coordination of international assistance to Guinea-Bissau and Burundi at various levels.

Coordination within the United Nations system

29. The Groups received extensive inter-agency support and were in turn instrumental in fostering a coordinated approach to the situation in Guinea-Bissau and Burundi within the United Nations system as a whole. The Department of Economic and Social Affairs provides substantive and technical secretariat services to the Groups, which also receive support from the Department of Political Affairs and the United Nations political offices in the field, namely the United Nations Operation in Burundi and the United Nations Peace-building Support Office in Guinea-Bissau, the Office of the Special Adviser on Africa and, in the case of Burundi, the Office for the Coordination of Humanitarian Affairs. In addition, the Groups received excellent support and maintained fruitful relationships with UNDP both at headquarters and in the field, as well as with other funds and programmes,

the World Bank, IMF and specialized agencies of the United Nations system, including through their country representatives. For example, a thematic briefing on food security in Burundi was organized for the group by the Food and Agriculture Organization of the United Nations (FAO), the World Food Programme (WFP) and the International Fund for Agricultural Development (IFAD). The groups also integrated in their analysis and advocacy work the outcomes of relevant major international conferences and summits, in particular the Brussels Programme of Action for the Least Developed Countries for the Decade 2001-2010 and the Millenium Declaration.

30. The Ad Hoc Advisory Groups relied on all these entities to obtain a clear picture of the situation in the two countries, formulate policy recommendations, propose support mechanisms and follow them up. The Economic and Social Council, as an open forum involving all United Nations agencies, is in a unique position to rally such coordinated support. The Groups, as Economic and Social Council bodies, have benefited from this comparative advantage that the Council possesses within the intergovernmental machinery. In turn, this process has served to sensitize the United Nations system to the need for greater coherence in its work. Although the recommendations made by the Groups are not operational in nature and do not go into the details of assistance delivery, they review existing mechanisms and arrangements and point the way for stronger coordination among United Nations bodies. For example, the Groups have reviewed the common country assessment (CCA)/United Nations Development Assistance Framework (UNDAF) process and stressed the need for coordination to focus not only on information-sharing but also on the development of common strategies and planning. The need for collaboration between country teams and political offices has also been underlined, in order to implement activities that stabilize the country and build peace in a more effective and coherent manner.

Collaboration between the United Nations and the Bretton Woods institutions

31. A clear achievement of the Ad Hoc Advisory Groups has been their contribution to further reinforcing collaboration between the United Nations and the Bretton Woods institutions in relation to these two post-conflict countries. A representative of the World Bank stated at the recent informal meeting on the assessment of the Groups, "the Economic and Social Council Group on Burundi has managed to create a true dynamic among the key players", before calling for "an even closer partnership between the Economic and Social Council Group and the Bretton Woods institutions". The frequent interaction of the Guinea-Bissau Group with an officer with responsibility for Guinea-Bissau IMF also testifies to the mutually beneficial collaboration that has been established.

32. Collaboration between the United Nations and the Bretton Woods institutions is particularly important in post-conflict situations. Assistance efforts are often centred on economic programmes supported under the IMF Poverty Reduction and Growth Facility (PRGF), to which key post-conflict programmes, such as the demobilization and reinsertion of combatants and the clearance of domestic financial arrears from the war period, are linked. However, a Poverty Reduction and Growth Facility arrangement requires strong macroeconomic and reform policies and may not be well suited for post-conflict countries, which need quick assistance. This is all the more problematic in that donors pay attention to disbursements by the Bretton Woods institutions before disbursing their own funds, which can lead to

situations in which a post-conflict country that proves unable to implement a programme satisfactorily — mainly because of persistent fiscal expenditure overruns — may have its post-conflict assistance strategy halted by donors.

33. Solutions must therefore be found to assist these countries engage in the post-conflict recovery phase. An example of a positive dynamic is the successful collaboration on the situation in Guinea-Bissau, where IMF provides assistance by updating the cash-flow plan and setting up a monitoring and reporting system for the UNDP-managed Emergency Economic Management Fund. This well-coordinated and structured programme of assistance was advocated by UNDP and IMF on the technical side and by the Economic and Social Council ad hoc advisory group on the political side. The Group also facilitated a more flexible application of criteria by IMF to the situation in Guinea-Bissau. More recently, the World Bank has announced assistance to Guinea-Bissau through Emergency Rehabilitation and Recovery Credit.

34. In Burundi, important areas of convergence with the Bretton Woods institutions were also evident. The World Bank has provided continued support to Burundi throughout the years of conflict and IMF, which stressed to the Group that improvements had been made in terms of public expenditure management, approved drawings in post-conflict emergency assistance followed by a three-year agreement under the Poverty Reduction and Growth Facility. The Group, for its part, has encouraged the Government to prepare a poverty reduction strategy paper (PRSP) and called on donors to make contributions to the multi-year debt trust fund established by the World Bank for Burundi. It also encouraged the Bretton Woods institutions to continue to provide support to the country and has closely followed developments in this regard.

Increased interaction between the Security Council and the Economic and Social Council

35. The Ad Hoc Advisory Groups have also contributed to enhanced coordination and synergies within the intergovernmental process itself. The situation in Burundi and in Guinea-Bissau was on the agenda of the Security Council when the Groups were created. This provided an opportunity for the two Councils to interact on a common area of concern within their respective spheres of competence and to address the socio-economic and the political sides of post-conflict recovery in a coherent way. As Ambassador Munir Akram, the President of the Security Council in May 2004, said at the informal meeting of the Economic and Social Council held on 3 May to assess the work of the Groups, the actions of the two Councils in post-conflict situations in Africa, consistent with their respective responsibilities under the Charter of the United Nations, are complementary and mutually reinforcing.

36. The fruitful collaboration between the two Councils was facilitated by the participation of the Chairman of the Ad Hoc Working Group of the Security Council on Conflict Prevention and Resolution in Africa in the work of the Ad Hoc Advisory Groups. The Security Council Working Group invited the Economic and Social Council Groups to attend meetings and share views on the situation in the two countries.

37. The most visible form of this interaction has been the joint Economic and Social Council-Security Council mission to Guinea-Bissau in June 2003, which is to be replicated in late June 2004. In addition, the President of the Economic and

Social Council bas been invited to address the Security Council on the situation in Guinea-Bissau and Burundi and on various thematic issues. The Presidential statements and statements to the press of the Security Council on these two countries make references to the work of the Ad Hoc Advisory Groups.

Collaboration with regional organizations

38. Regional organizations play an important role in the stabilization of countries emerging from conflicts. In Guinea-Bissau, the Economic Community of West African States (ECOWAS) and the Community of Portuguese-Speaking Countries (CPLP) played a critical role in the transition process, while the African Union and the Regional Initiative for Burundi are key players in the stabilization of the situation in Burundi. The active role of these regional organizations testifies to their willingness to take the lead in supporting post-conflict countries in their sensitive transition period and is closely linked to NEPAD.

39. The Groups interacted with regional organizations either directly (as in the case of the African Mission in Burundi) or indirectly, such as through members of the groups which are also members of these regional organizations (e.g. Brazil, which chairs CPLP). However, owing to time and travel limitations, the Ad Hoc Advisory Groups did not engage in a systematic exchange of views with regional organizations. More systematic consultations with regional organizations, including regional financial institutions such as the African Development Bank and the Central Bank of West African States, would have further enhanced the Groups' contribution.

VI. Implementation of the Ad Hoc Advisory Groups' recommendations

40. In its resolution 2003/50, the Council requested that the report to be submitted on the assessment of the work of the groups also cover progress made in the implementation of their recommendations. As has been indicated in the previous sections of this report, many of the Groups' recommendations have been implemented. Concerning their recommendations for the long-term international support of Guinea-Bissau and Burundi, section V above highlights the achievements of the Groups and the relevance of the guidance they provided. In addition, the Ad Hoc Advisory Groups will present updated information on their activities, including the follow-up to their recommendations, during the Council's general segment. The current section will therefore be limited to a few additional comments.

41. As analysed above, the partnership approach advocated by the Group for Guinea-Bissau in its short-term recommendations has largely been implemented and has led to positive results. The holding of legislative elections and the formation of a new Government this year are major steps towards renewed donor assistance. However, the Economic Emergency Management Fund has received contributions amounting to just over $4 million of the overall target of $18.3 million — a shortfall that needs to be urgently made up. The presidential elections, to be held in March 2005, will be an important event which should further normalize the relationship of the country with the donor community. The Council will be in a better position to assess the long-term recommendations of the Group when renewed broad support is provided to the country.

42. As the report of the Ad Hoc Advisory Group on Burundi was finalized early this year, it is still too soon to assess the implementation of its recommendations. However, progress has been made on the various issues addressed by the Group, including the peace process and stability, as exemplified by the deployment of a United Nations peacekeeping operation. As for the international partnerships promoted by the Group, the Minister of Planning, Reconstruction and Development of Burundi stressed, at the Council's meeting on 3 May, that the level of tangible support to Burundi remains below the Government's expectations and the commitments made at the Forum of Development Partners for Burundi in Brussels.

43. Common to the two processes are the difficulties faced by the countries' authorities in attracting a level of financial support commensurate with their needs. Although the Ad Hoc Advisory Groups have been successful in mobilizing support, they remain a diplomatic rather than a resource mobilization mechanism and are clearly limited in terms of securing financial assistance.

VII. Conclusions and recommendations

44. The Ad Hoc Advisory Groups have proved to be innovative, non-bureaucratic and flexible mechanisms in bringing the attention of the international community to the necessity of supporting the transition from conflict to peace and development in two African countries emerging from conflicts. However, having fulfilled the core of the mandate, which is to identify short- and long-term recommendations for further support, the Groups find themselves having to spend a considerable amount of time on advocacy to ensure that the recommendations are being implemented and that adequate and coordinated assistance is provided to the two countries. The Groups have also been effective in giving concrete shape to the comprehensive approach to peace and stability that the United Nations has been calling for and have fostered genuine collaboration among various international stakeholders who have traditionally worked in a very fragmented manner. For these reasons, the Ad Hoc Advisory Groups have fulfilled the tasks entrusted to them by the Council in a satisfactory manner and are an example of how the intergovernmental machinery can enhance its impact in relation to post-conflict countries.

45. A common feature of the situation in Guinea-Bissau and Burundi is the fact that they are not in the forefront of international assistance and therefore need an advocate. The ad hoc advisory groups have been useful in this context. The Council might wish to build on their experiences in its response to requests for the creation of new groups.

46. This report has highlighted the successes achieved and has presented areas for possible improvement which might be taken into account in considering future groups and in the completion of the work of the existing ones. At present, the mandate of the Guinea-Bissau Group has been extended until the current session of the Council, while the mandate of the Burundi Group has still to be completed.

47. Some countries have expressed concern that the groups should not become standing, rather than ad hoc, bodies. Clearly, these groups should not be seen as continuing mechanisms and must conclude their mandate within a

reasonable time. The Council will need to take the necessary decisions, taking into account all aspects of the situation in each case.

48. **The United Nations Secretariat, particularly the Department of Economic and Social Affairs, has provided substantive secretariat support to the Groups and has sought to cover some of the operating costs, including travel of the Groups' members to Guinea-Bissau and Burundi, on an ad hoc basis, requiring special efforts to identify from various sources the necessary resources for that purpose. In view of the difficulties encountered in securing appropriate resources for the functioning of these Groups, the Council will also need to address this issue in the context of its overall assessment of this process.**

49. **The experience of the ad hoc advisory groups on African countries emerging from conflicts should be taken into account in the broader context of ongoing discussions within the United Nations on promoting coherent international responses to countries in crisis. The lessons drawn from experiences such as those of the ad hoc advisory groups should also be borne in mind in the broader debate on institutional reform of the United Nations system.**

Annex

Overview of the activities carried out by the ad hoc advisory groups on Guinea-Bissau and Burundi

A. Activities of the Ad Hoc Advisory Group on Guinea-Bissau

- In decision 2002/304 of 25 October 2002, the Council established the Ad Hoc Advisory Group on Guinea-Bissau. The Group is composed of the Permanent Representatives of South Africa (Chairman), Brazil, Guinea-Bissau, the Netherlands and Portugal. The President of the Economic and Social Council, the Chairman of the Group of Friends of Guinea-Bissau and the Chairman of the Ad Hoc Working Group of the Security Council on Conflict Prevention and Resolution in Africa, also take part in its work.

- Following a series of consultations with national stakeholders and development partners of Guinea-Bissau in New York and Washington, and a visit to the country in November 2002, the Ad Hoc Advisory Group submitted its first report to the Council on 10 January 2003 (E/2003/8). In that report, the Group recommended a partnership approach between the authorities of Guinea-Bissau and the international community, under which the authorities would work on the promotion of the rule of law and political stability, while international development partners would provide emergency financial support and technical assistance in various fields. The Group recommended the establishment of an emergency economic management fund, to be managed by UNDP, to channel international assistance. It also made recommendations for the long-term development of the country.

- On 28 January 2003, the Group organized a meeting between the Minister for Foreign Affairs and the Minister of Economy and Finance with donors and the Bretton Woods institutions which focused on the establishment of the partnership approach between the Government and the donors. This approach was endorsed by the Economic and Social Council in resolution 2003/1 of 31 January 2003 and was subsequently advocated by the Group.

- From 26 to 28 June 2003, the Advisory Group undertook a mission to Guinea-Bissau, jointly with the Security Council. The objectives of the Group were to promote dialogue with the authorities of Guinea-Bissau, to appeal to the Government to take measures to prepare for the forthcoming elections, to promote better understanding between the authorities and donors and to address the humanitarian situation in the country.[a]

- In September 2003, President Kumba Yala resigned from office and a broad political agreement on a transition process was signed. Immediately after these events, the Ad Hoc Advisory Group issued a statement in which it called on donors to consider extending emergency assistance to Guinea-Bissau to enable it to return to democratic rule and to address the deteriorating socio-economic situation.

- On 17 November 2003, the Group hosted an informal dialogue between the Transitional President of Guinea-Bissau, the Minister for Foreign Affairs,

[a] Further information is included in a supplementary report submitted by the Group to the Council at its substantive session of 2003 (E/2003/95, annex).

United Nations entities, the Bretton Woods institutions and major donors, in order to discuss ways of providing emergency support to the Transitional Government.

- The last report of the Group to the Economic and Social Council (E/2004/10 of 6 February 2004) describes recent developments in further detail and provides an account of international donor support to Guinea-Bissau. The report includes information on the UNDP-managed Emergency Economic Management Fund, the establishment of which was recommended in the Group's initial report. This fund now channels important financial assistance from donors. The report also stresses that the Emergency Economic Management Plan and the budget for 2004 drawn up by the Government with support from the Bretton Woods institutions, the African Development Bank and UNDP, have been elaborated with explicit reference to the partnership approach proposed by the Group.

- On 6 April 2004, the Group issued a statement in which it congratulated the people of Guinea-Bissau on the successful legislative elections held on 28 March and called for broad donor support to Guinea-Bissau, including through contributions to the Emergency Economic Management Fund managed by UNDP, in order to respond to the pressing needs of the population.

- Through the Advisory Group, the working relationship between the Economic and Social Council and the Security Council has increased. On 4 August and 19 December 2003, the President of the Security Council issued press statements which commended the Group for its role in the follow-up provided to the situation in Guinea-Bissau. On 18 November 2003, the President of the Economic and Social Council and the Chairman of the Ad Hoc Advisory Group were invited to address the Security Council at a private meeting on the situation in Guinea-Bissau and to present the work carried out by those bodies on development support to the country.

- Reference documents: reports of the Ad Hoc Advisory Group on Guinea-Bissau to the Economic and Social Council: E/2003/8, E/2003/95 and E/2004/10; resolutions and decisions: Council decision 2002/304 of 25 October 2002, and Council resolutions 2003/1 of 31 January 2003, 2003/53 of 24 July 2003 and 2004/1 of 3 May 2004.

B. Activities of the Ad Hoc Advisory Group on Burundi

- In its resolution 2003/16 of 22 July 2003, the Council decided to establish the Ad Hoc Advisory Group on Burundi. In accordance with Council decision 2003/311 of 22 August 2003, the Group is composed of the Permanent Representatives to the United Nations of South Africa (Chairman), Belgium, Burundi, Ethiopia, France and Japan. The President of the Council and the Chairman of the Ad Hoc Working Group of the Security Council on Conflict Prevention and Resolution in Africa also take part in the work of the Advisory Group.

- The Group held a series of briefing sessions and meetings in New York with major United Nations and international interlocutors, including the Bretton Woods institutions, to discuss development support for Burundi. The Group

also met the President of Burundi, Mr. Domitien Ndayizeye, in September 2003.

- The Group undertook a mission to Burundi from 19 to 26 November 2003, during which it met with government authorities, major socio-economic actors, United Nations entities active on the ground, the diplomatic community and other development partners.

- The President of the Economic and Social Council was invited to address the Security Council at a meeting on the situation in Burundi held on 4 December 2003. The Security Council also welcomed the work of the Group in a presidential statement of 22 December 2003 (S/PRST/2003/30).

- The Group was represented at the Forum of Development Partners of Burundi, held in Brussels on 13 and 14 January 2004. Participants in the Forum pledged US$ 1.032 billion of assistance to Burundi.

- On 11 February 2004, the Ad Hoc Advisory Group on Burundi submitted its report to the Council (E/2004/11). In this report, the Group underlines the various and interlinked challenges that the country is confronted with in embarking on the road from relief to development. It expresses its encouragement of the efforts made by Burundi to cope with these challenges and stresses that, in view of the considerable humanitarian, economic and social needs of the country, a strong partnership with the international community is required for these efforts to provide results. The Group makes recommendations for consideration by the Council on the following themes: (i) maintaining the momentum and consolidating the peace process, (ii) promoting stability, (iii) engaging in poverty alleviation and sustainable development and (iv) reinforcing international partnership.

- On 3 May 2004, the Council adopted resolution 2004/1, in which it took note with appreciation of the report of the group and welcomed its recommendations.

- Reference documents: Economic and Social Council resolution 2003/16 of 21 July 2003 and decision 2003/311 of 22 August 2003; report of the Ad Hoc Advisory Group on Burundi of 11 February 2004: E/2004/11; Council resolution 2004/2 of 3 May 2004.

United Nations E/2004/87

Economic and Social Council

Distr.: General
25 June 2004

Original: English

Substantive session of 2004
New York, 28 June-23 July 2004
Item 14 (g) of the provisional agenda
Social and human rights questions: human rights

General Comments of the Human Rights Committee

Note by the Secretary-General

Pursuant to article 40, paragraph 4, of the International Covenant on Civil and Political Rights, the Secretary-General has the honour to submit to the Economic and Social Council General Comment No. 29 [72], adopted by the Human Rights Committee during its seventy-second session, General Comment No. 30 [75], adopted by the Committee during its seventy-fifth session and General Comment 31 [80], adopted by the Committee during its eightieth session.

These general comments have also been included in annual reports of the Committee to the General Assembly (A/56/40, Vol. I, for General Comment 29 [72], A/57/40, Vol. I, for General Comment 30 [75], and (future) A/59/40, Vol. I, for General Comment 31 [80]).

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General Comment No. 29 [72]
Derogations from provisions of the Covenant during a state of emergency

(adopted at the 1950th meeting on 24 July 2001)

1. Article 4 of the Covenant is of paramount importance for the system of protection for human rights under the Covenant. On the one hand, it allows for a State party unilaterally temporarily to derogate from a part of its obligations under the Covenant. On the other hand, article 4 subjects both this very measure of derogation, as well as its material consequences, to a specific regime of safeguards. The restoration of a state of normalcy where full respect for the Covenant can again be secured must be the predominant objective of a State party derogating from the Covenant. In this general comment, replacing its General Comment No. 5, adopted in the thirteenth session (1981), the Committee seeks to assist States parties to meet the requirements of article 4.

2. Measures derogating from the provisions of the Covenant must be of an exceptional and temporary nature. Before a State moves to invoke article 4, two fundamental conditions must be met: the situation must amount to a public emergency which threatens the life of the nation, and the State party must have officially proclaimed a state of emergency. The latter requirement is essential for the maintenance of the principles of legality and rule of law at times when they are most needed. When proclaiming a state of emergency with consequences that could entail derogation from any provision of the Covenant, States must act within their constitutional and other provisions of law that govern such proclamation and the exercise of emergency powers; it is the task of the Committee to monitor that the laws in question enable and secure compliance with article 4. So that the Committee can perform its task, States parties to the Covenant should include in their reports submitted under article 40 sufficient and precise information about their law and practice in the field of emergency powers.

3. Not every disturbance or catastrophe qualifies as a public emergency which threatens the life of the nation, as required by article 4, paragraph 1. During armed conflict, whether international or non-international, rules of international humanitarian law become applicable and help, in addition to the provisions in article 4 and article 5, paragraph 1, of the Covenant, to prevent the abuse of a State's emergency powers. The Covenant requires that even during an armed conflict measures derogating from the Covenant are allowed only if and to the extent that the situation constitutes a threat to the life of the nation. If States parties consider invoking article 4 in other situations than an armed conflict, they should carefully consider the justification why such a measure is necessary and legitimate in the circumstances. On a number of occasions the Committee has expressed its concern over States parties that appear to have derogated from rights protected by the Covenant, or whose domestic law appears to allow such derogation in situations not covered by article 4.[1]

4. A fundamental requirement for any measures derogating from the Covenant, as set forth in article 4, paragraph 1, is that such measures are limited to the extent strictly required by the exigencies of the situation. This requirement relates to the duration, geographical coverage and material scope of the state of emergency and any measures of derogation resorted to because of the emergency. Derogation from

some Covenant obligations in emergency situations is clearly distinct from restrictions or limitations allowed even in normal times under several provisions of the Covenant.[2] Nevertheless, the obligation to limit any derogations to those strictly required by the exigencies of the situation reflects the principle of proportionality which is common to derogation and limitation powers. Moreover, the mere fact that a permissible derogation from a specific provision may, of itself, be justified by the exigencies of the situation does not obviate the requirement that specific measures taken pursuant to the derogation must also be shown to be required by the exigencies of the situation. In practice, this will ensure that no provision of the Covenant, however validly derogated from, will be entirely inapplicable to the behaviour of a State party. When considering State party reports, the Committee has expressed its concern over insufficient attention being paid to the principle of proportionality.[3]

5. The issues of when rights can be derogated from, and to what extent, cannot be separated from the provision in article 4, paragraph 1, of the Covenant according to which any measures derogating from a State party's obligations under the Covenant must be limited "to the extent strictly required by the exigencies of the situation". This condition requires that States parties provide careful justification not only for their decision to proclaim a state of emergency but also for any specific measures based on such a proclamation. If States purport to invoke the right to derogate from the Covenant during, for instance, a natural catastrophe, a mass demonstration including instances of violence, or a major industrial accident, they must be able to justify not only that such a situation constitutes a threat to the life of the nation, but also that all their measures derogating from the Covenant are strictly required by the exigencies of the situation. In the opinion of the Committee, the possibility of restricting certain Covenant rights under the terms of, for instance, freedom of movement (art. 12) or freedom of assembly (art. 21) is generally sufficient during such situations and no derogation from the provisions in question would be justified by the exigencies of the situation.

6. The fact that some of the provisions of the Covenant have been listed in article 4, paragraph 2, as not being subject to derogation, does not mean that other articles in the Covenant may be subjected to derogations at will, even where a threat to the life of the nation exists. The legal obligation to narrow down all derogations to those strictly required by the exigencies of the situation establishes both for States parties and for the Committee a duty to conduct a careful analysis under each article of the Covenant based on an objective assessment of the actual situation.

7. Article 4, paragraph 2, of the Covenant explicitly prescribes that no derogation from the following articles may be made: article 6 (right to life), article 7 (prohibition of torture or cruel, inhuman or degrading punishment, or of medical or scientific experimentation without consent), article 8, paragraphs 1 and 2 (prohibition of slavery, slave-trade and servitude), article 11 (prohibition of imprisonment because of inability to fulfil a contractual obligation), article 15 (the principle of legality in the field of criminal law, i.e. the requirement of both criminal liability and punishment being limited to clear and precise provisions in the law that was in place and applicable at the time the act or omission took place, except in cases where a later law imposes a lighter penalty), article 16 (the recognition of everyone as a person before the law), and article 18 (freedom of thought, conscience and religion). The rights enshrined in these provisions are non-derogable by the very fact that they are listed in article 4, paragraph 2. The same applies, in relation to

States that are parties to the Second Optional Protocol to the Covenant, for the undertaking to abolish the death penalty, as prescribed in article 6 of that Protocol. Conceptually, the qualification of a Covenant provision as a non-derogable one does not mean that no limitations or restrictions would ever be justified. The reference in article 4, paragraph 2, to article 18, a provision that includes a specific clause on restrictions in its paragraph 3, indicates that the permissibility of restrictions is independent of the issue of derogability. Even in times of most serious public emergencies, States that interfere with the freedom to manifest one's religion or belief must justify their actions by referring to the requirements specified in article 18, paragraph 3. On several occasions the Committee has expressed its concern of rights that are non-derogable according to article 4, paragraph 2, being either derogated from or under a risk of derogation due to inadequacies in the legal regime of the State party.[4]

8. According to article 4, paragraph 1, one of the conditions for the justifiability of any derogation from the Covenant is that the measures taken do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. Even though article 26 or the other Covenant provisions related to non-discrimination (arts. 2, 3, 14, para. 1, 23, para. 4, 24, para. 1, and 25) have not been listed among the non-derogable provisions in article 4, paragraph 2, there are elements or dimensions of the right to non-discrimination that cannot be derogated from in any circumstances. In particular, this provision of article 4, paragraph 1, must be complied with if any distinctions between persons are made when resorting to measures that derogate from the Covenant.

9. Furthermore, article 4, paragraph 1, requires that no measure derogating from the provisions of the Covenant may be inconsistent with the State party's other obligations under international law, particularly the rules of international humanitarian law. Article 4 of the Covenant cannot be read as justification for derogation from the Covenant if such derogation would entail a breach of the State's other international obligations, whether based on treaty or general international law. This is reflected also in article 5, paragraph 2, of the Covenant according to which there shall be no restriction upon or derogation from any fundamental rights recognized in other instruments on the pretext that the Covenant does not recognize such rights or that it recognizes them to a lesser extent.

10. Although it is not the function of the Human Rights Committee to review the conduct of a State party under other treaties, in exercising its functions under the Covenant the Committee has the competence to take a State party's other international obligations into account when it considers whether the Covenant allows the State party to derogate from specific provisions of the Covenant. Therefore, when invoking article 4, paragraph 1, or when reporting under article 40 on the legal framework related to emergencies, States parties should present information on their other international obligations relevant for the protection of the rights in question, in particular those obligations that are applicable in times of emergency.[5] In this respect, States parties should duly take into account the developments within international law as to human rights standards applicable in emergency situations.[6]

11. The enumeration of non-derogable provisions in article 4 is related to, but not identical with, the question whether certain human rights obligations bear the nature of peremptory norms of international law. The proclamation of certain provisions of

the Covenant as being of a non-derogable nature, in article 4, paragraph 2, is to be seen partly as recognition of the peremptory nature of some fundamental rights ensured in treaty form in the Covenant (e.g., arts. 6 and 7). However, it is apparent that some other provisions of the Covenant were included in the list of non-derogable provisions because it can never become necessary to derogate from these rights during a state of emergency (e.g., arts. 11 and 18). Furthermore the category of peremptory norms extends beyond the list of non-derogable provisions as given in article 4, paragraph 2. States parties may in no circumstances invoke article 4 of the Covenant as justification for acting in violation of humanitarian law or peremptory norms of international law, for instance by taking hostages, by imposing collective punishments, through arbitrary deprivations of liberty or by deviating from fundamental principles of fair trial, including the presumption of innocence.

12. In assessing the scope of legitimate derogation from the Covenant, one criterion can be found in the definition of certain human rights violations as crimes against humanity. If action conducted under the authority of a State constitutes a basis for individual criminal responsibility for a crime against humanity by the persons involved in that action, article 4 of the Covenant cannot be used as a justification that a state of emergency exempted the State in question from its responsibility in relation to the same conduct. Therefore, the recent codification of crimes against humanity, for jurisdictional purposes, in the Statute of the International Criminal Court is of relevance in the interpretation of article 4 of the Covenant.[7]

13. In those provisions of the Covenant that are not listed in article 4, paragraph 2, there are elements that in the Committee's opinion cannot be made subject to lawful derogation under article 4. Below, some illustrative examples are presented.

(a) All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Although this right, prescribed in article 10 of the Covenant, is not separately mentioned in the list of non-derogable rights in article 4, paragraph 2, the Committee believes that here the Covenant expresses a norm of general international law not subject to derogation. This is supported by the reference to the inherent dignity of the human person in the preamble of the Covenant and by the close connection between articles 7 and 10.

(b) The prohibitions against taking of hostages, abductions or unacknowledged detention are not subject to derogation. The absolute nature of the prohibition of such acts, even in times of emergency, is justified by the status of these norms as norms of general international law.

(c) The Committee is of the opinion that the international protection of the rights of persons belonging to minorities includes elements that must be respected in all circumstances. This is reflected in the prohibition against genocide in international law, in the inclusion of a non-discrimination clause in article 4 itself (para. 1), as well as in the non-derogable nature of article 18.

(d) As confirmed by the Statute of the International Criminal Court, deportation or forcible transfer of population without grounds permitted under international law, in the form of forced displacement by expulsion or other coercive means from the area in which the persons concerned are lawfully present, constitutes a crime against humanity.[8] The legitimate right to derogate from article 12 of the

Covenant during a state of emergency can never be accepted as justifying such measures.

(e) No declaration of a state of emergency made pursuant to article 4, paragraph 1, may be invoked as justification for a State party to engage itself, contrary to article 20, in propaganda for war or in advocacy of national, racial or religious hatred that would constitute incitement to discrimination, hostility or violence.

14. Article 2, paragraph 3, of the Covenant requires a State party to the Covenant to provide remedies for any violation of the provisions of the Covenant. This clause is not mentioned in the list of non-derogable provisions in article 4, paragraph 2, but it constitutes a treaty obligation inherent in the Covenant as a whole. Even if a State party, during a state of emergency, and to the extent that such measures are strictly required by the exigencies of the situation, may introduce adjustments to the practical functioning of their procedures governing judicial or other remedies, the State party must comply with the fundamental obligation, under article 2, paragraph 3, of the Covenant, to provide a remedy that is effective.

15. It is inherent in the protection of rights explicitly recognized as non-derogable in article 4, paragraph 2, that they must be secured by procedural guarantees, including often judicial guarantees. The provisions of the Covenant relating to procedural safeguards may never be made subject to measures that would circumvent the protection of non-derogable rights. Article 4 may not be resorted to in a way that would result in derogation from non-derogable rights. Thus, for example, as article 6 of the Covenant is non-derogable in its entirety, any trial leading to the imposition of the death penalty during a state of emergency must conform to the provisions of the Covenant, including all the requirements of articles 14 and 15.

16. Safeguards related to derogation, as embodied in article 4 of the Covenant, are based on the principles of legality and the rule of law inherent in the Covenant as a whole. As certain elements of the right to a fair trial are explicitly guaranteed under international humanitarian law during armed conflict, the Committee finds no justification for derogation from these guarantees during other emergency situations. The Committee is of the opinion that the principles of legality and the rule of law require that fundamental requirements of fair trial must be respected during a state of emergency. Only a court of law may try and convict a person for a criminal offence. The presumption of innocence must be respected. In order to protect non-derogable rights, the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention, must not be diminished by a State party's decision to derogate from the Covenant.[9]

17. In paragraph 3 of article 4, States parties, when they resort to their power of derogation under article 4, commit themselves to a regime of international notification. A State party availing itself of the right of derogation must immediately inform the other States parties, through the Secretary-General of the United Nations, of the provisions it has derogated from and of the reasons for such measures. Such notification is essential not only for the discharge of the Committee's functions, in particular in assessing whether the measures taken by the State party were strictly required by the exigencies of the situation, but also to permit other States parties to monitor compliance with the provisions of the Covenant. In view of the summary character of many of the notifications received in the past, the Committee

emphasizes that the notification should include full information about the measures taken and a clear explanation of the reasons for them, with full documentation attached regarding their law. Additional notifications are required if the State party subsequently takes further measures under article 4, for instance by extending the duration of a state of emergency. The requirement of immediate notification applies equally in relation to the termination of derogation. These obligations have not always been respected: States parties have failed to notify other States parties, through the Secretary-General, of a proclamation of a state of emergency and of the resulting measures of derogation from one or more provisions of the Covenant; and States parties have sometimes neglected to submit a notification of territorial or other changes in the exercise of their emergency powers.[10] Sometimes, the existence of a state of emergency and the question whether a State party has derogated from provisions of the Covenant have come to the attention of the Committee only incidentally, in the course of the consideration of a State party's report. The Committee emphasizes the obligation of immediate international notification whenever a State party takes measures derogating from its obligations under the Covenant. The duty of the Committee to monitor the law and practice of a State party for its compliance with article 4 does not depend on whether that State party has submitted a notification.

Notes

[1] See the following Concluding Observations: Tanzania (1992), CCPR/C/79/Add.12, para. 7; Dominican Republic (1993), CCPR/C/79/Add.18, para. 4; United Kingdom (1995), CCPR/C/79/Add.55, para. 23; Peru (1996), CCPR/C/79/Add.67, para. 11; Lebanon (1997), CCPR/C/79/Add.78, para. 10; Bolivia (1997), CCPR/C/79/Add.74, para. 14; Colombia (1997), CCPR/C/79/Add.76, para. 25; Israel (1998), CCPR/C/79/Add.93, para. 11; Uruguay (1998), CCPR/C/79/Add.90, para. 8.

[2] See, for instance, articles 12 and 19 of the Covenant.

[3] See, e.g., Concluding Observations on Israel (1998), CCPR/C/79/Add.93, para. 11.

[4] See the following Concluding Observations: Dominican Republic (1993), CCPR/C/79/Add.18, para. 4; Nepal (1994), CCPR/C/79/Add.42, para. 9; Jordan (1994), CCPR/C/79/Add.35, para. 6; Russian Federation (1995), CCPR/C/79/Add.54, para. 27; Zambia (1996), CCPR/C/79/Add.62, para. 11; Gabon (1996), CCPR/C/79/Add.71, para. 10; Colombia (1997), CCPR/C/79/Add.76, para. 25; Iraq (1997), CCPR/C/79/Add.84, para. 9; Armenia (1998), CCPR/C/79/Add.100, para. 7; Israel (1998), CCPR/C/79/Add.93, para. 11; Uruguay (1998) CCPR/C/79/Add.90, para. 8; Mongolia (2000), CCPR/C/79/Add.120, para. 14; Kyrgyzstan (2000), CCPR/CO/69/KGZ, para. 12.

[5] Reference is made to the Convention on the Rights of the Child which has been ratified by almost all States parties to the Covenant and does not include a derogation clause. As article 38 of the Convention clearly indicates, the Convention is applicable in emergency situations.

[6] Reference is made to reports of the Secretary-General to the Commission on Human Rights, submitted pursuant to Commission resolution 1998/29 on minimum humanitarian standards (later: fundamental standards of humanity), E/CN.4/1999/92, E/CN.4/2000/94 and E/CN.4/2001/91, and to earlier efforts to identify fundamental rights applicable in all circumstances, for instance the Paris Minimum Standards of Human Rights Norms in a State of Emergency (ILA), the Syracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, the Final Report of Mr. Leandro Despouy, Special Rapporteur of the Sub-Commission, on the protection of human rights and states of emergency (E/CN.4/Sub.2/1997/19), Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2), the Turku (Åbo) Declaration of Minimum Humanitarian Standards

(1990; E/CN.4/1995/116). As a field of ongoing further work reference is made to the decision of the 26th International Conference of the Red Cross and Red Crescent (1995) to assign the ICRC the task of preparing a report on the customary rules of international humanitarian law, applicable in international and non-international armed conflicts.

[7] See articles 6 (genocide) and 7 (crimes against humanity) of the Statute which by 19 July 2001 had been ratified by 37 States. While many of the specific forms of conduct enlisted in article 7 of the Statute are directly linked to violations against those human rights that are enlisted as non-derogable provisions in article 4, paragraph 2, of the Covenant, the category of crimes against humanity as defined in that provision covers also violations of some provisions of the Covenant that have not been mentioned in the said provision of the Covenant. For example, certain grave violations of article 27 may at the same time constitute genocide under article 6 of the ICC Statute, and article 7, in turn, covers practices that are related to, besides articles 6, 7 and 8 of the Covenant, also articles 9,12, 26 and 27.

[8] See articles 7 (1) (d) and 7 (2) (d) of the Statute of the International Criminal Court.

[9] See the Committee's Concluding Observations on Israel, 1998, para. 21: "... The Committee considers the present application of administrative detention to be incompatible with articles 7 and 16 of the Covenant, neither of which allows for derogation in times of public emergency. The Committee stresses, however, that a State party may not depart from the requirement of effective judicial review of detention." See also United Nations document A/49/40, Supplement No. 40, vol. I, annex XI, the response by the Committee to the Submission on Prevention of Discrimination and Protection of Minorities, concerning a draft third optional protocol to the Covenant: "The Committee is satisfied that States parties generally understand that the right to habeas corpus and amparo should not be limited in situations of emergency. Furthermore, the Committee is of the view that the remedies provided in article 9, paragraphs 3 and 4, read in conjunction with article 2 are inherent to the Covenant as a whole."

[10] Concluding Observations on Peru (1992), CCPR/C/79/Add.8, para. 10; Ireland (1993), CCPR/C/79/Add.21, para. 11; Egypt (1993), CCPR/C/79/Add.23, para. 7; Cameroon (1994), CCPR/C/79/Add.33, para. 7; Russian Federation (1995), CCPR/C/79/Add.54, para. 27; Zambia (1996), CCPR/C/79/Add.62, para. 11; Lebanon (1997), CCPR/C/79/Add.78, para. 10; India (1997), CCPR/C/79/Add.81, para. 19; Mexico (1999), CCPR/C/79/Add.109, para. 12.

General Comment No. 30 [75]
Reporting obligations of States parties under article 40 of the Covenant

(adopted at the 2025th meeting, on 16 July 2002; this General Comment would replace former General Comment No. 1)

1. States parties have undertaken to submit reports in accordance with article 40 of the Covenant within one year of its entry into force for the States parties concerned and, thereafter, whenever the Committee so requests.

2. The Committee notes, as appears from its annual reports, that only a small number of States have submitted their reports on time. Most of them have been submitted with delays ranging from a few months to several years and some States parties are still in default, despite repeated reminders by the Committee.

3. Other States have announced that they would appear before the Committee but have not done so on the scheduled date.

4. To remedy such situations, the Committee has adopted new rules:

(a) If a State party has submitted a report but does not send a delegation to the Committee, the Committee may notify the State party of the date on which it intends to consider the report or may proceed to consider the report at the meeting that had been initially scheduled;

(b) When the State party has not presented a report, the Committee may, at its discretion, notify the State party of the date on which the Committee proposes to examine the measures taken by the State party to implement the rights guaranteed under the Covenant:

(i) If the State party is represented by a delegation, the Committee will, in the presence of the delegation, proceed with this examination on the date assigned;

(ii) If the State party is not represented, the Committee may, at its discretion, either decide to proceed to consider the measures taken by the State party to implement the guarantees of the Covenant at the initial date or notify a new date to the State party.

For the purpose of the application of these procedures, the Committee shall hold its meetings in public session if a delegation is present, and in private if a delegation is not present, and shall follow the modalities set forth in the reporting guidelines and in the rules of procedure of the Committee.

5. After the Committee has adopted concluding observations, a follow-up procedure shall be employed in order to establish, maintain or restore a dialogue with the State party. For this purpose and in order to enable the Committee to take further action, the Committee shall appoint a Special Rapporteur, who will report to the Committee.

6. In the light of the report of the Special Rapporteur, the Committee shall assess the position adopted by the State party and, if necessary, set a new date for the State party to submit its next report.

General Comment No. 31 [80]
The nature of the general legal obligation imposed on States parties to the Covenant

(adopted at the 2187th meeting, on 29 March 2004)

1. This General Comment replaces General Comment No. 3, reflecting and developing its principles. The general non-discrimination provisions of article 2, paragraph 1, have been addressed in General Comment No. 18 and General Comment No. 28, and this General Comment should be read together with them.

2. While article 2 is couched in terms of the obligations of State parties towards individuals as the right-holders under the Covenant, every State party has a legal interest in the performance by every other State party of its obligations. This follows from the fact that the "rules concerning the basic rights of the human person" are erga omnes obligations and that, as indicated in the fourth preambular paragraph of the Covenant, there is an obligation under the Charter of the United Nations to promote universal respect for, and observance of, human rights and fundamental freedoms. Furthermore, the contractual dimension of the treaty involves any State party to a treaty being obligated to every other State party to comply with its undertakings under the treaty. In this connection, the Committee reminds States parties of the desirability of making the declaration contemplated in article 41. It further reminds those States parties already having made the declaration of the potential value of availing themselves of the procedure under that article. However, the mere fact that a formal inter-State mechanism for complaints to the Human Rights Committee exists in respect of States parties that have made the declaration under article 41 does not mean that this procedure is the only method by which States parties can assert their interest in the performance of other States parties. On the contrary, the article 41 procedure should be seen as supplementary to, not diminishing, States parties' interest in each others' discharge of their obligations. Accordingly, the Committee commends to States parties the view that violations of Covenant rights by any State party deserve their attention. To draw attention to possible breaches of Covenant obligations by other States parties and to call on them to comply with their Covenant obligations should, far from being regarded as an unfriendly act, be considered as a reflection of legitimate community interest.

3. Article 2 defines the scope of the legal obligations undertaken by States parties to the Covenant. A general obligation is imposed on States parties to respect the Covenant rights and to ensure them to all individuals in their territory and subject to their jurisdiction (see para. 10 below). Pursuant to the principle articulated in article 26 of the Vienna Convention on the Law of Treaties, States parties are required to give effect to the obligations under the Covenant in good faith.

4. The obligations of the Covenant in general and article 2 in particular are binding on every State party as a whole. All branches of government (executive, legislative and judicial) and other public or governmental authorities, at whatever level — national, regional or local — are in a position to engage the responsibility of the State party. The executive branch that usually represents the State party internationally, including before the Committee, may not point to the fact that an action incompatible with the provisions of the Covenant was carried out by another branch of government as a means of seeking to relieve the State party from responsibility for the action and consequent incompatibility. This understanding

flows directly from the principle contained in article 27 of the Vienna Convention on the Law of Treaties, according to which a State party "may not invoke the provisions of its internal law as justification for its failure to perform a treaty". Although article 2, paragraph 2, allows States parties to give effect to Covenant rights in accordance with domestic constitutional processes, the same principle operates so as to prevent States parties from invoking provisions of the constitutional law or other aspects of domestic law to justify a failure to perform or give effect to obligations under the treaty. In this respect, the Committee reminds States parties with a federal structure of the terms of article 50, according to which the Covenant's provisions "shall extend to all parts of federal States without any limitations or exceptions".

5. The article 2, paragraph 1, obligation to respect and ensure the rights recognized by the Covenant has immediate effect for all States parties. Article 2, paragraph 2, provides the overarching framework within which the rights specified in the Covenant are to be promoted and protected. The Committee has, as a consequence, previously indicated in its General Comment 24 that reservations to article 2, would be incompatible with the Covenant when considered in the light of its objects and purposes.

6. The legal obligation under article 2, paragraph 1, is both negative and positive in nature. States parties must refrain from violation of the rights recognized by the Covenant, and any restrictions on any of those rights must be permissible under the relevant provisions of the Covenant. Where such restrictions are made, States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights. In no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right.

7. Article 2 requires that States parties adopt legislative, judicial, administrative, educative and other appropriate measures in order to fulfil their legal obligations. The Committee believes that it is important to raise levels of awareness about the Covenant not only among public officials and State agents but also among the population at large.

8. The article 2, paragraph 1, obligations are binding on States [parties] and do not, as such, have direct horizontal effect as a matter of international law. The Covenant cannot be viewed as a substitute for domestic criminal or civil law. However, the positive obligations on States parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights insofar as they are amenable to application between private persons or entities. There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States parties of those rights, as a result of States parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities. States are reminded of the interrelationship between the positive obligations imposed under article 2 and the need to provide effective remedies in the event of breach under article 2, paragraph 3. The Covenant itself envisages in some articles certain areas where there are positive obligations on States parties to address the activities of private persons or entities. For example, the

privacy-related guarantees of article 17 must be protected by law. It is also implicit in article 7 that States parties have to take positive measures to ensure that private persons or entities do not inflict torture or cruel, inhuman or degrading treatment or punishment on others within their power. In fields affecting basic aspects of ordinary life such as work or housing, individuals are to be protected from discrimination within the meaning of article 26.

9. The beneficiaries of the rights recognized by the Covenant are individuals. Although, with the exception of article 1, the Covenant does not mention the rights of legal persons or similar entities or collectivities, many of the rights recognized by the Covenant, such as the freedom to manifest one's religion or belief (art. 18), the freedom of association (art. 22) or the rights of members of minorities (art. 27), may be enjoyed in community with others. The fact that the competence of the Committee to receive and consider communications is restricted to those submitted by or on behalf of individuals (art. 1 of the Optional Protocol) does not prevent such individuals from claiming that actions or omissions that concern legal persons and similar entities amount to a violation of their own rights.

10. States parties are required by article 2, paragraph 1, to respect and to ensure the Covenant rights to all persons who may be within their territory and to all persons subject to their jurisdiction. This means that a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State party, even if not situated within the territory of the State party. As indicated in General Comment 15 adopted at the twenty-seventh session (1986), the enjoyment of Covenant rights is not limited to citizens of States parties but must also be available to all individuals, regardless of nationality or statelessness, such as asylum-seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State party. This principle also applies to those within the power or effective control of the forces of a State party acting outside its territory, regardless of the circumstances in which such power or effective control was obtained, such as forces constituting a national contingent of a State party assigned to an international peacekeeping or peace-enforcement operation.

11. As implied in General Comment 29,[1] the Covenant applies also in situations of armed conflict to which the rules of international humanitarian law are applicable. While, in respect of certain Covenant rights, more specific rules of international humanitarian law may be specially relevant for the purposes of the interpretation of Covenant rights, both spheres of law are complementary, not mutually exclusive.

12. Moreover, the article 2 obligation requiring that States parties respect and ensure the Covenant rights for all persons in their territory and all persons under their control entails an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed. The relevant judicial and administrative authorities should be made aware of the need to ensure compliance with the Covenant obligations in such matters.

13. Article 2, paragraph 2, requires that States parties take the necessary steps to give effect to the Covenant rights in the domestic order. It follows that, unless Covenant rights are already protected by their domestic laws or practices, States

parties are required on ratification to make such changes to domestic laws and practices as are necessary to ensure their conformity with the Covenant. Where there are inconsistencies between domestic law and the Covenant, article 2 requires that the domestic law or practice be changed to meet the standards imposed by the Covenant's substantive guarantees. Article 2 allows a State party to pursue this in accordance with its own domestic constitutional structure and accordingly does not require that the Covenant be directly applicable in the courts, by incorporation of the Covenant into national law. The Committee takes the view, however, that Covenant guarantees may receive enhanced protection in those States where the Covenant is automatically or through specific incorporation part of the domestic legal order. The Committee invites those States parties in which the Covenant does not form part of the domestic legal order to consider incorporation of the Covenant to render it part of domestic law, to facilitate full realization of Covenant rights as required by article 2.

14. The requirement under article 2, paragraph 2, to take steps to give effect to the Covenant rights is unqualified and of immediate effect. A failure to comply with this obligation cannot be justified by reference to political, social, cultural or economic considerations within the State.

15. Article 2, paragraph 3, requires that in addition to effective protection of Covenant rights States parties must ensure that individuals also have accessible and effective remedies to vindicate those rights. Such remedies should be appropriately adapted so as to take account of the special vulnerability of certain categories of person, including in particular children. The Committee attaches importance to States parties' establishing appropriate judicial and administrative mechanisms for addressing claims of rights violations under domestic law. The Committee notes that the enjoyment of the rights recognized under the Covenant can be effectively assured by the judiciary in many different ways, including direct applicability of the Covenant, application of comparable constitutional or other provisions of law, or the interpretive effect of the Covenant in the application of national law. Administrative mechanisms are particularly required to give effect to the general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies. National human rights institutions, endowed with appropriate powers, can contribute to this end. A failure by a State party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant. Cessation of an ongoing violation is an essential element of the right to an effective remedy.

16. Article 2, paragraph 3, requires that States parties make reparation to individuals whose Covenant rights have been violated. Without reparation to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy, which is central to the efficacy of article 2, paragraph 3, is not discharged. In addition to the explicit reparation required by articles 9, paragraph 5, and 14, paragraph 6, the Committee considers that the Covenant generally entails appropriate compensation. The Committee notes that, where appropriate, reparation can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations.

17. In general, the purposes of the Covenant would be defeated without an obligation integral to article 2 to take measures to prevent a recurrence of a violation of the Covenant. Accordingly, it has been a frequent practice of the Committee in cases under the Optional Protocol to include in its Views the need for measures, beyond a victim-specific remedy, to be taken to avoid recurrence of the type of violation in question. Such measures may require changes in the State party's laws or practices.

18. Where the investigations referred to in paragraph 15 reveal violations of certain Covenant rights, States parties must ensure that those responsible are brought to justice. As with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant. These obligations arise notably in respect of those violations recognized as criminal under either domestic or international law, such as torture and similar cruel, inhuman and degrading treatment (art. 7), summary and arbitrary killing (art. 6) and enforced disappearance (arts. 7 and 9 and, frequently, 6). Indeed, the problem of impunity for these violations, a matter of sustained concern by the Committee, may well be an important contributing element in the recurrence of the violations. When committed as part of a widespread or systematic attack on a civilian population, these violations of the Covenant are crimes against humanity (see Rome Statute of the International Criminal Court, art. 7). Accordingly, where public officials or State agents have committed violations of the Covenant rights referred to in this paragraph, the States parties concerned may not relieve perpetrators from personal responsibility, as has occurred with certain amnesties (see General Comment 20 [44]) and prior legal immunities and indemnities. Furthermore, no official status justifies persons who may be accused of responsibility for such violations being held immune from legal responsibility. Other impediments to the establishment of legal responsibility should also be removed, such as the defence of obedience to superior orders or unreasonably short periods of statutory limitation in cases where such limitations are applicable. States parties should also assist each other to bring to justice persons suspected of having committed acts in violation of the Covenant that are punishable under domestic or international law.

19. The Committee further takes the view that the right to an effective remedy may in certain circumstances require States parties to provide for and implement provisional or interim measures to avoid continuing violations and to endeavour to repair at the earliest possible opportunity any harm that may have been caused by such violations.

20. Even when the legal systems of States parties are formally endowed with the appropriate remedy, violations of Covenant rights still take place. This is presumably attributable to the failure of the remedies to function effectively in practice. Accordingly, States parties are requested to provide information on the obstacles to the effectiveness of existing remedies in their periodic reports.

Notes

[1] General Comment No. 29 on States of Emergencies, adopted on 24 July 2001, reproduced in Annual Report for 2001, A/56/40, Annex VI, para. 3.